

## **INITIAL STATEMENT OF REASONS**

### **TITLE 2. ADMINISTRATION DIVISION 7. SECRETARY OF STATE CHAPTER 9. BUSINESS PROGRAMS**

#### **PROPOSED AMENDMENTS TO SECTIONS 21903 - SPECIAL HANDLING FEES, AND 21905 EXPEDITED FILING OF DOCUMENTS**

#### **PROPOSED ADOPTION OF SECTION 21905.5 - REQUEST FOR SPECIFIC FILE DATE**

### **1. SPECIFIC PURPOSE.**

#### **A. Amendments to Sections 21903 and 21905**

Section 21903 permits Secretary of State customers to submit business entity documents for filing to the Secretary of State at the Sacramento public counter, and upon the payment of an additional \$15 special handling fee to have the document processed and returned to the customer while they wait (the "wait-for" service). There is no guaranteed turnaround time for this service, but generally the documents are returned on the same day.

Section 21905 permits Secretary of State customers to submit business entity documents for filing to the Secretary of State at the Sacramento public counter, and upon the payment of an additional \$350 expedite fee to have the document processed and returned to the customer within 24 hours, excluding weekends and holidays (the "24-hour expedite" service).

Today there are many companies providing private, for profit courier and other services to the business community and assisting them with documents submitted to the Secretary of State for filing. Because of the extraordinarily high volume of documents submitted by these service companies and other frequent users (together referred to as "Frequent Users") in recent years, the Secretary of State has had little choice but to discontinue the optional wait-for service to Frequent Users. Documents submitted by Frequent Users at the Sacramento public counter with the optional extra \$15 special handling fee are currently dropped-off and processed (generally in 3-7 business days) in priority over documents the Secretary of State receives by mail.

The proposed amendments are intended to replace the optional wait-for service that is currently offered only to individual customers with an optional same-day turnaround service ("same-day expedited" service) that will be available to all Secretary of State customers at the Sacramento public counter. The Secretary of State will continue to offer the 24-hour expedite service (\$350 fee) and the very low cost \$15 special handling fee for documents dropped-off at its Sacramento public counter to any person requesting such

service. These documents will continue to be processed in priority over documents the Secretary of State receives by mail.

## **B. Adoption of Section 21905.5**

Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062 generally specify that upon receipt by the Secretary of State, if a business entity document conforms to law, the Secretary of State shall file it. Those sections also provide that, unless a future file date is requested, the file date shall be the date the document is received by the Secretary of State.

A significant percentage of the business entity documents received by the Secretary of State for filing do not conform to law and are returned without being filed. In order to meet the business needs of its customers, when a business entity document is returned by the Secretary of State for failing to conform to law, the Secretary of State generally honors the original submission date as the file date.

This regulation is intended to provide written guidelines for the public to utilize this process.

## **2. NECESSITY.**

### **A. Amendments to Sections 21903 and 21905**

When Section 21903 initially created the optional wait-for service, there were only a handful of Frequent Users in existence and the use of the wait-for service was minimal and manageable. However, in recent years the number of business entity filings received at the Sacramento public counter has increased significantly and now exceeds the number of documents received by mail. For example, in fiscal year 2006-2007, the Secretary of State received approximately 132,000 business entity filings at the Sacramento public counter requesting the \$15 special handling service (an average of over 570 documents each business day). Frequent Users submitted an estimated 81% of these \$15 special handling requests.

Due to the increase in the number of service companies (currently over 300) and the significant increase in the number of documents the service companies and other frequent users deliver to the Secretary of State's Sacramento public counter for filing with special handling, it has been necessary to discontinue the wait-for service as an option for Frequent Users, although it is still offered as an option to the general public.

At monthly meetings held by the Secretary of State, the Frequent Users have communicated a growing need for an optional same-day expedited service that Frequent Users can utilize when submitting business entity documents to the Sacramento public counter. Frequent Users have also voiced growing dissatisfaction and frustration with the inequity between Frequent Users and the general public in the application of the \$15 special handling option (e.g. wait-for vs. drop-off service). Amendments to Sections 21903 and 21905 are necessary in order to (1) provide all customers with a same-day expedited service option, (2) ensure the Secretary of State can offer the same service

options equally to all customers bringing documents to the Sacramento public counter and (3) provide a low-cost option for those customers who want their business entity documents to be processed with priority over documents submitted by mail.

#### **B. Adoption of Section 21905.5**

A significant percentage of the business entity documents received by the Secretary of State for filing do not conform to law and are returned without being filed. Detailed rejection comments are included with the document when it is returned. Generally, the documents are corrected and resubmitted to the Secretary of State for filing within a few days. For many customers who file business entity documents with the Secretary of State, the file date of those documents is of critical importance. When a document is returned for failing to conform to law, it can create hardships for those businesses unless they can retain the original file date for the document.

This regulation is needed to provide written guidelines for the public.

### **3. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

Except for a summary of monthly statistics indicating the volume of business entity documents received in the Sacramento office, the Secretary of State did not rely on any other technical, theoretical or empirical studies or reports in proposing the changes to these regulations.

### **4. REASONABLE ALTERNATIVES TO THE REGULATION AND THE OFFICE'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

No other alternatives have been presented to or considered by the Secretary of State's Office.

### **5. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL OR OTHER BUSINESSES.**

The Secretary of State has not identified any alternatives that will lessen any adverse impact on small businesses. The proposed regulatory action should facilitate the overall filing of business entity documents with the Secretary of State and generally benefit small businesses.